



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 300

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2004-0029

IN THE MATTER OF:

CENEX PETRO SERVE

Respondent

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)

**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

January 26, 2004  
DATE

SIGNED  
Alfred C. Smith  
Regional Judicial Officer



In the Matter of: )  
 )  
CENEX Petro Serve ) **EXPEDITED CONSENT AGREEMENT**  
 )  
Respondent. ) **DOCKET NO.: CWA-08-2004-0029**

The Clean Water Act (the Act), as amended, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of EPA to assess administrative penalties against any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This authority has been properly delegated to the undersigned EPA official.

Respondent admits its facility is subject to the SPCC regulations.

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in accordance with 40 C.F.R. part 112 within thirty (30) days unless an extension for achieving compliance is granted by EPA at its discretion.

Respondent agrees to correct the items cited on the attached List of SPCC Violations and provide documentation of the corrections to EPA within thirty (30) days unless an extension for achieving compliance is granted by EPA at its discretion.

Respondent admits that EPA has jurisdiction in this proceeding.

Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.

This agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

This Agreement contains all terms of the settlement agreed to by the parties.

Respondent consents and agrees to the assessment of a civil penalty of \$950.00 which, shall be paid by sending, via certified mail, a cashier's or certified check for that amount, payable to "Oil Spill Liability Trust Fund" along with a signed copy of this agreement, to:

Donna Inman  
Technical Enforcement Program (8ENF-UFO)  
USEPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this agreement once incorporated into the final order, or fails to make the corrective measures to obtain compliance as represented, this agreement is null and void, and EPA may pursue any applicable enforcement options.

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

Each party shall bear its own costs and attorneys fees in connection with this matter.

This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,  
Office of Enforcement Compliance and Environmental Justice, Complainant.**

By : **SIGNED** \_\_\_\_\_  
Elisabeth Evans, Director  
Technical Enforcement Program

**1/23/04** \_\_\_\_\_  
Date

CENEX Petro Serve, Respondent.

By: **SIGNED** \_\_\_\_\_  
**1-14-04** \_\_\_\_\_

Name: **Dennis Vagle** \_\_\_\_\_  
Title: **Assistant Manager** \_\_\_\_\_

Date

## List of SPCC Violations

### SPCC Plan [40 C.F.R. § 112.3]:

Failure to prepare and implement a facility SPCC Plan in accordance with 40 C.F.R. § 112.7 and .8.

Some specific technical violations at the CENEX Petro Serve found during the inspection are:

Inspections and tests not conducted in accordance with written procedures and records not maintained as required by 40 CFR § 112.7(e).

Operating personnel not trained in spill prevention, rules and regulations as required by 40 CFR § 112.7(f)(1).

Discharge prevention briefings not held as required by 40 CFR § 112.7(f)(3).

Neither facility nor oil storage equipment is fenced as required by 40 CFR § 112.7(g).

No warning or barrier system at the loading/unloading rack to prevent premature departure of tank trucks prior to disconnection of transfer hoses as required by

40 CFR § 112.7(h)(2).

Inadequate secondary containment for bulk storage containers as required by

40 CFR § 112.8(c)(2). Natural topography provides some containment capacity.

Only casual inspections of aboveground tanks are performed. Records of inspections of bulk storage containers not kept as required by 40 CFR § 112.8(c)(6).

## **CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **CENEX PETRO SERVE, DOCKET NO.: CWA-08-2004-0029** was filed with the Regional Hearing Clerk on January 26, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to David J. Janik, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on January 26, 2004, to:

Dennis Vagle  
Assistant Manager  
Cenex Petro Serve  
1321 Center Avenue  
Moorehead, MN 56560

and

Commander  
Finance Center (OGR)  
U.S. Coast Guard  
1430 A Kristina Way  
Chesapeake, VA 23326

January 26, 2004

**SIGNED**

\_\_\_\_\_  
Tina Artemis  
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE  
ON JANUARY 26, 2004.**





